

Christopher J. Drotzmann, OSB No. 962636

Email: cdrotzmann@davisrothwell.com

Sean D. McKean, OSB No. 204142

Email: smckean@davisrothwell.com

DAVIS ROTHWELL EARLE & XÓCHIHUA P.C.

200 S.W. Market Street, Suite 1800

Portland, Oregon 97201

Tel: (503) 222-4422

Fax: (503) 222-4428

Of Attorneys for Defendants Community

Development Partners and Guardian Management, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON - PORTLAND DIVISION

STEVEN L. STANLEY,

Case No. 3:21-cv-193-MO

Plaintiff,

v.

COMMUNITY DEVELOPMENT
PARTNERS (CDP) – ERIK PAINE; KYLE
PAINE, BRADFORD LONG; GUARDIAN
MANAGEMENT, LLC; VERIDIAN
MANAGEMENT, INC.,

Defendants.

**DEFENDANTS COMMUNITY
DEVELOPMENT PARTNERS AND
GUARDIAN MANAGEMENT,
LLC’S ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS TO
PLAINTIFF’S SECOND
AMENDED COMPLAINT**

Defendants Community Development Partners (“CDP”) and Guardian Management,

LCC (“Guardian”) answer Plaintiff’s Second Amended Complaint as follows:

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PRELIMINARY STATEMENT

1. CDP and Guardian expressly deny any wrongdoing or that either entity violated any of the statutes or regulations cited in Paragraph 1. CDP and Guardian otherwise admit the remaining allegations in Paragraph 1.

JURISDICTION AND VENUE

2. CDP and Guardian admit Paragraphs 2 through 4.

THE PARTIES

3. CDP and Guardian admit Paragraph 5.

4. CDP and Guardian admit in part the allegations in Paragraph 6 that Plaintiff has resided as a tenant at an apartment complex located at 850 NE 81st Avenue, in Portland, Multnomah County known as the Milepost 5 Apartments since April 2019. CDP and Guardian further admit in part that CDP has owned Milepost 5 Apartments during that time and that Guardian has been the property management company of Milepost 5 Apartments since February 1, 2020. CDP and Guardian otherwise deny the remaining allegations in Paragraph 6.

5. CDP and Guardian admit Paragraph 7.

6. CDP and Guardian admit Paragraph 8.

7. Paragraph 9 concerns other parties and no response is required. To the extent a response is required, CDP and Guardian deny that Defendant Viridian Management, Inc. provided property management and operation services for Milepost 5 Apartments until February 1, 2021. Defendant Viridian Management, Inc. provided property management and operation services for Milepost 5 Apartments until February 1, 2020. CDP and Guardian admit the remaining allegations in Paragraph 9.

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FACTUAL ALLEGATIONS

8. CDP and Guardian lack sufficient knowledge or information to form a belief regarding the truth of the allegations contained in Paragraphs 13 through 16 and therefore deny Paragraphs 13 through 16.

9. CDP and Guardian admit Paragraph 17.

10. CDP and Guardian lack sufficient knowledge or information to form a belief regarding the truth of the allegations contained in Paragraph 18 and therefore deny Paragraph 18.

11. CDP and Guardian admit Paragraph 19.

12. CDP and Guardian admit in part the allegations in Paragraph 20 that Plaintiff was provided with an accessible bathroom. CDP and Guardian are without sufficient knowledge or information to form a belief regarding the truth of the remaining allegations contained in Paragraph 20 and therefore deny those remaining allegations.

13. CDP and Guardian admit Paragraphs 21 through 24.

14. CDP and Guardian admit in part the allegations in Paragraph 26 that Plaintiff made complaints about Milepost 5 Apartments. CDP and Guardian deny the remaining allegations contained in Paragraph 26.

15. CDP and Guardian admit in part the allegations in Paragraph 27 that Plaintiff, CDP, and Defendant Viridian Management, Inc. entered into a Confidential Mutual Release and Settlement Agreement (the “Agreement”) on December 20, 2019, releasing any and all claims arising out of any events leading up to and including December 20, 2019. The Agreement speaks for itself. CDP and Guardian deny the remaining allegations in Paragraph 27.

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16. CDP and Guardian admit in part the allegations in Paragraph 30 that in or about September 2019 several of Defendant Viridian Management, Inc.'s employees quit. CDP and Guardian otherwise deny the remaining allegations of Paragraph 30.

17. CDP and Guardian admit in part the allegations in Paragraph 36 that Plaintiff has made a complaint that a tenant from room 328 threw a full can of beer at Plaintiff's window. CDP and Guardian deny the remaining allegations in Paragraph 36.

18. CDP and Guardian admit in part the allegations in paragraph 39 that Plaintiff has complained of the incident alleged in Paragraph 38. CDP and Guardian deny the remaining allegations in Paragraph 39.

19. CDP and Guardian admit in part the allegations in Paragraph 41 that Plaintiff was granted a restraining order against Platt on March 9, 2021. Defendants are without sufficient knowledge or information to form a belief regarding the truth of the remaining allegations contained in Paragraph 41, and therefore deny those allegations.

20. CDP and Guardian are without sufficient knowledge or information to form a belief regarding the truth of the allegations contained in Paragraph 43 and therefore deny Paragraph 43.

21. CDP and Guardian admit Paragraph 44.

22. CDP and Guardian admit in part the allegations in Paragraph 45 that other tenants have smoked inside the Milepost 5 Apartments building. CDP and Guardian otherwise deny the remaining allegations in Paragraph 45.

23. CDP and Guardian admit in part the allegations in Paragraph 47 that Plaintiff has made complaints regarding violations of the no smoking policy, including complaints that such

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violations affect his medical conditions. CDP and Guardian otherwise deny the remaining allegations in Paragraph 47.

FIRST CLAIM FOR RELIEF

24. In response to paragraph 51, the Fair Housing Amendments Act of 1988 speaks for itself and no response is required.

SECOND CLAIM FOR RELIEF

25. CDP and Guardian admit the allegations in Paragraph 60 that CDP receives federal financial assistance. The remaining allegations in Paragraph 60 contain legal conclusions to which no response is required.

FOURTH CLAIM FOR RELIEF

26. In response to paragraph 71, O.R.S. § 90.320(f) speaks for itself and no response is required.

27. CDP and Guardian admit in part the allegations in Paragraph 74 that Plaintiff informed CDP and Guardian that he suffered from asthma, COPD, reactive airway disease, and chronic maxillary sinusitis. CDP and Guardian otherwise deny the remaining allegations contained in Paragraph 74.

SIXTH CLAIM FOR RELIEF

28. Plaintiff's Sixth Claim for Relief alleging Intentional Infliction of Emotional Distress was dismissed upon a November 1, 2021 ruling of the Court. Thus, no response is required.

29. Except as admitted expressly herein, CDP and Guardian hereby deny each and every remaining allegation, including Plaintiff's Prayer for Relief.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

30. One or more of Plaintiff's claims for relief fails to state a claim from which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Offset)

31. Any award to Plaintiff must be offset by the value of monies or other awards paid to Plaintiff by others in connection with Plaintiff's claims.

THIRD AFFIRMATIVE DEFENSE

(Release/Waiver)

32. On December 20, 2019, Plaintiff entered into the Agreement with CDP, releasing and forever discharging CDP and Defendant Viridian Management, Inc. along with those entities' agents, employees, successors, and assigns from all claims, losses, liabilities, obligations, suits, debts, demands, and damages of any kind, known or unknown, suspected or unsuspected which relate in any way to Plaintiff's tenancy at Milepost 5 Apartments.

33. Guardian is a third-party beneficiary of the Agreement with the right to enforce its terms.

34. Some or all of Plaintiff's claims against CDP or Guardian relate to conduct which occurred before the parties entered into the Agreement.

35. Plaintiff has released CDP and Guardian from any possible claims or damages arising from conduct which occurred before the parties entered into the Agreement.

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FOURTH AFFIRMATIVE DEFENSE

(Fault of Others)

36. Plaintiff's alleged damages, if any, were caused in whole or in part by the actions, omissions, and/or conduct of others over whom neither CDP nor Guardian exercised any control. Plaintiff is not entitled to recover any damages from CDP or Guardian on the basis of any such actions, omissions, or conduct.

FIFTH AFFIRMATIVE DEFENSE

(Comparative Fault – Viridian Management, Inc.)

37. Defendant Viridian Management, Inc. acted as the property manager for Milepost 5 Apartments at all relevant times until January 31, 2020. Defendant Viridian Management, Inc. is at fault for any conduct for which CDP or Guardian are found liable that occurred before February 1, 2020.

SIXTH AFFIRMATIVE DEFENSE

(Comparative Fault – Plaintiff)

38. Plaintiff's damages, if any, are the result of his own negligence in one or more of the following particulars:

- a. Failing to keep a proper lookout for conditions then and there existing;
- b. Failing to report the existence of any unhygienic conditions, maintenance issues, and safety issues, as described in the Second Amended Complaint; and
- c. Negligently creating unhygienic conditions, maintenance issues, or safety issues, as described in the Second Amended Complaint.

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SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

39. Plaintiff has failed to mitigate his damages alleged in the Second Amended Complaint.

EIGHTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

40. CDP and Guardian reserve the right to add additional affirmative defenses as discovery unfolds.

COUNTERCLAIMS

FIRST COUNTERCLAIM

(Breach of Contract – Against Plaintiff Steven Stanley)

41. CDP and Guardian reallege paragraphs 1-42.

42. On December 20, 2019, CDP entered into a Confidential Mutual Release and Settlement Agreement (the “Agreement”) with Plaintiff.

43. Guardian is an intended third-party beneficiary of the Agreement with the right to enforce its terms.

44. The Agreement forever discharged CDP and Defendant Viridian Management, Inc., along with those entities’ agents, employees, successors, and assigns from any and all claims, losses, liabilities, obligations, suits, debts, demands, and damages of any kind, known or unknown, suspected or unsuspected which related in any way to Plaintiff’s tenancy at Milepost 5 Apartments.

45. Some or all of Plaintiff’s claims against CDP and Guardian relate to conduct which occurred before the Agreement was executed. To the extent Plaintiff brings claims against

CDP and Guardian related to conduct that occurred prior to December 20, 2019, Plaintiff has breached the Agreement.

46. The Agreement also contains a Confidentiality clause requiring the parties to the Agreement to refrain from disclosing the terms of the agreement except as may be necessary to effectuate the Agreement's terms, to comply with State or Federal law, due to a bona fide business necessity, or where compelled by law.

47. Plaintiff attached the Agreement to his original Complaint, which he filed with this Court. Plaintiff's original Complaint did not allege any claim that CDP, Guardian, or Defendant Viridian Management, Inc. had breached the Agreement.

48. Plaintiff's disclosure of the Agreement's terms was not necessary to effectuate the Agreement's terms, to comply with State or Federal law, related to any bona fide business necessity, or compelled by law. Plaintiff's disclosure of the Agreements terms constitutes a breach of the Agreement.

49. The Agreement further provides that "[i]n the event either Party deems it necessary to bring action for breach of this agreement or to enforce any terms and conditions of this Agreement, the prevailing party in such action, suit, or arbitration shall be entitled to an award of damages and reasonable attorney fees and costs."

50. CDP and Guardian have incurred, and continue to incur, attorney fees and legal costs in defending against Plaintiff's claims related to conduct that occurred prior to December 20, 2019, and in enforcing the terms of the Agreement. CDP and Guardian are entitled to their reasonable attorney fees and costs incurred herein pursuant to the Agreement.

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PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Second Amended Complaint, CDP and Guardian respectfully request the following relief:

- a. That judgment be entered against Plaintiff and in favor of CDP and Guardian;
- b. That Plaintiff's Second Amended Complaint be dismissed with prejudice;
- c. That judgment be entered in favor of CDP and Guardian on their counterclaim;
- d. That CDP and Guardian be awarded their costs and disbursements incurred

herein, including reasonable attorney fees;

- e. Such other relief as the Court may deem equitable and just.

DATED this 16th day of November, 2021.

DAVIS ROTHWELL
EARLE & XÓCHIHUA P.C.

s/ Sean D. McKean

Christopher J. Drotzmann, OSB No. 962636

Email: cdrotzmann@davisrothwell.com

Sean D. McKean, OSB No. 204142

Email: smckean@davisrothwell.com

Of Attorneys for Defendants

Community Development Partners and
Guardian Management, LLC

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS COMMUNITY DEVELOPMENT PARTNERS AND GUARDIAN MANAGEMENT, LLC'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF'S SECOND AMENDED COMPLAINT** on the following:

Carter M. Mann, OSB. No. 960899
Courtney B. McFate, OSB No. 202025
Lane Powell PC
601 SW 2nd Ave., Ste. 2100
Portland, OR 97204
Tel: 503.778.2121
Fax: 503.778.2200
Email: MannC@lanepowell.com
McFateC@lanepowell.com
Of Attorneys for Plaintiff

Katie Smith, OSB No. 034545
Paul L. Hathaway IV, OSB No. 183515
Lorber Greenfield & Polito, LLP
10200 SW Greenburg Rd., Ste. 740
Portland, OR 97223
Tel: 503.416.4785
Fax: 503.416.4795
Email: ksmith@lorberlaw.com
phathaway@lorberlaw.com
sjenkins@lorberlaw.com
chicks@lorberlaw.com
Of Attorneys for Defendant Viridian Management, Inc.

by mailing to the foregoing a true copy thereof, placed in a sealed envelope, with postage prepaid, addressed as listed above, and depositing the same in the United States mail through a post office at Portland, Oregon, on this day.

DATED this 16th day of November, 2021.

DAVIS ROTHWELL
EARLE & XÓCHIHUA, P.C.

s/ Sean D. McKean
Christopher J. Drotzmann, OSB No. 962636
E-mail: cdrotzmann@davisrothwell.com
Sean D. McKean, OSB No. 204142
Email: smckean@davisrothwell.com
Of Attorneys for Defendants
Community Development Partners and
Guardian Management, LLC